

**ST 06-11**

**Tax Type: Sales Tax**

**Issue: Statute of Limitations Application**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**ABC INTERNATIONAL, INC.,**

**Taxpayer**

**No. 05-ST-0000**

**BDN Nos. 0000000000000, 0000**

**IBT No.00000-0000**

**Kenneth J. Galvin**

**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Ms. Jane Doe, appearing on behalf of ABC International, Inc.; Mr. Gary Stutland, Special Assistant Attorney General, appearing on behalf of the Department of Revenue of the State of Illinois.

**Synopsis:**

This matter comes on for hearing by way of a protest filed by ABC International Inc., (hereinafter "ABC") on April 4, 2005, in response to the Department's MTC-29, "Notice of Tentative Denial of Claim for Sales Tax" dated January 26, 2005, which denied the taxpayer's claim for a refund of use tax for the periods May, 2001 and April, 2001 for BDN Nos. 00000000000000 and 00000000000000. A hearing was held in this matter on January 31, 2006 with Ms. Jones testifying for ABC. Following submission of all evidence and a review of the record, it is recommended that the Notice of Tentative Denial of Claim for Sales Tax be finalized as issued. In support thereof, the following "Findings of Fact" and "Conclusions of Law" are made.

**Findings of Fact:**

1. On October 8, 2004, ABC filed an ST-1-X, “Amended Sales and Use Tax Return,” No. 00000000000000 for the period May, 2001 showing an overpayment of \$1,371 and No. 00000000000000 for the period April, 2001 showing an overpayment of \$4,914. The returns were received on October 13, 2004. Tr. pp. 9-12; Dept. Ex. No. 1.
2. The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s MTC-29, “Notice of Tentative Denial of Claim for Sales Tax,” dated January 26, 2005 denying taxpayer’s claims for refund in the amounts of \$1,371 and \$4,914 because the claims were filed outside the Statute of Limitations. Tr. pp. 9-12; Dept Ex. No. 1.

**Conclusions of Law:**

According to the Use Tax Act (35 ILCS 105/1 *et seq.*), if it appears that an amount of tax has been paid to the Department in error by a retailer who is required or authorized to collect and remit the tax, such retailer may file a claim for credit or refund with the Department. The Act requires that “any claim filed hereunder shall be filed upon a form prescribed and furnished by the Department.” A claim for credit or refund shall be considered to have been filed with the Department on the date on which it is received by the Department. 35 ILCS 105/19. For any claim or refund filed with the Department after July 1 but before December 31 of any given year, no amount of tax erroneously paid more than three years prior to such July 1 shall be credited or refunded. 35 ILCS 105/21.

In W. L. Miller v. Zehnder, 315 Ill. App. 3d 799 (4<sup>th</sup> Dist. 2000), the taxpayer argued that a letter that was sent to the Department by the taxpayer stating the taxpayer’s intent to protest the

imposition of use tax and requesting a claim for credit form had the legal effect of initiating taxpayer's claim for credit. The court disagreed stating that Section 19 of the Use Tax Act (now 35 ILCS 105/19) provides that a taxpayer may file a claim for credit "upon a form prescribed and furnished by the Department." The court stated that were it to find that the letter requesting a claim for credit form had the same legal effect as submitting a completed form to the Department, "we would render the procedures in Section 19 of the [Use Tax] Act meaningless." *Id.* at 806.

ABC International, Inc. is located in Somewhere, New Jersey. Ms. Jones testified that she has been a sales tax consultant for ABC for the past eight years and has been employed in the "sales tax and use tax field" for the past ten years. Tr. p. 20. The testimony at the hearing is that ABC sent a refund request to the Department on January 15, 2004 that was received by the Department on January 20, 2004. Tr. pp. 13-17, 27; Taxpayer's Ex. No. 1. Ms. Jones testified that she sent the Department invoices, credit memos, the amount of money refunded to the customer, exemption certificates and "a letter describing everything." She did not submit an ST-1-X, "Amended Sales and Use Tax Return," which is the form prescribed and furnished by the Department for refunds of sales and use tax. Tr. pp. 23-24.

According to Ms. Jones's testimony, she was contacted by the Department in January, 2004. At that time the Department requested that she send in an "Amended Sales and Use Tax Return" to complete the refund claim. The Department told her that "they just needed that form to finalize everything." Tr. pp. 21-22, 28. Ms. Jones testified that she told the Department that ABC had a computer problem and that "the systems were down." She estimated that it would take "a few months" to get the system back up and get the information required for the Amended Sales and Use Tax Return. Tr. pp. 21-22. According to her testimony, ABC does business in every state and it

had to upload its entire computer system in order to recreate the sales journal for a three-year period for Illinois in order to complete the amended returns. Tr. pp. 23, 29.

ABC's phone records show that between January 20, 2004 and October 12, 2004, ABC had six conversations with the Department of Revenue. Tr. pp. 17-20; Taxpayer's Ex. Nos. 2, 3 and 4. According to Ms. Jones, "we kept calling each other back and forth to say okay, what's the progress." Tr. p. 22. The Department's representative advised Ms. Jones that the Department would "need the amended return in order to process the claim for credit." Tr. p. 29. In October, 2004, ABC had all the information it needed and "they were able to complete the amended returns and submit them." Tr. p. 22. ABC's "Amended Sales and Use Tax Returns" are dated October 8, 2004 and were received by the Department on October 13, 2004. Tr. p. 30. The Department rejected the claims as being outside the three-year statute of limitations. Dept. Ex. No. 1. For any refund filed with the Department after July 1 but before December 1 of any year, no amount of tax erroneously paid more than three years prior to such July 1 shall be refunded. 35 ILCS 105/21. ABC's amended returns, filed October 13, 2004 were for refunds of use tax paid erroneously on April 1, 2001 and May 1, 2001. Ms. Jones testified that she thought the claim was "filed" in January when the backup information was first submitted to the Department. According to Ms. Jones, the Department did not have any discussions with her regarding the Statute of Limitations. Tr. p. 26.

The information requested from taxpayers on the Department's ST-1-X, "Amended Sales and Use Tax Return" gives validity to the amount claimed. A claim for credit or refund simply cannot be processed without the information contained on the Amended Sales and Use Tax Return. This is precisely why Section 19 of the Use Tax Act requires that any claim for credit or refund be filed on the form prescribed by the Department. If the invoices, credit memos, exemption

certificates and “a letter describing everything” sent in by Ms. Jones in January, 2004 were sufficient documentation for a refund claim, it would render Section 19 of the Use Tax Act meaningless, as was recognized by the court in Miller, *supra*.

In closing arguments, counsel for ABC argued that “[T]here is an injustice here...The taxpayer is being denied money that it’s entitled to.” Tr. p. 39. Similar arguments were raised by the taxpayer in Dow Chemical Company v. The Department of Revenue, 224 Ill. App. 3d 263 (1<sup>st</sup> Dist 1991), where Dow requested a refund for the overpayment of taxes in the amount of \$401,237. The court noted that Section 911 of the Illinois Income Tax Act (37 ILCS 5/911) requires that claims for income tax refunds be filed not later than 3 years after the return is filed. The court denied Dow’s claim for a refund finding that Dow’s request, filed in 1983, for tax years 1975 through 1978, was filed after the statute of limitations had expired. In denying Dow’s claim, the Court stated that the taxpayer has an “affirmative duty” to file for a tax refund within the prescribed period of time. *Id.* at 267. In response to Dow’s argument that the statute of limitations be tolled for equitable reasons, the Court stated:

Although it might seem reasonable to judicially toll the statute of limitations in order to fashion a remedy for Dow, such a decision is not supported by Illinois case law which hold that no exceptions which toll a statute of limitations or enlarge its scope will be implied. *Id.* at 268.

As unfortunate as ABC’s situation may be, the Use Tax Act requires that the prescribed form be filed within the three-year statute of limitations period. ABC may have been unaware of the statute of limitations, but the statute must be strictly construed. Illinois law simply does not permit any discretion in the matter of using a form prescribed and furnished by the Department or in extending the statute of limitations period.

WHEREFORE, for the reasons stated above, it is my recommendation that the MTC-29, “Notice of Tentative Denial of Claim for Sales Tax,” issued to ABC on January 26, 2005 be finalized.

May 3, 2006

Kenneth J. Galvin  
Administrative Law Judge